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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 EMPLOYEE PAINTERS' TRUST HEALTH &
14 WELFARE FUND, *et al*,

15 Plaintiffs,

16 vs.

17 KDK McKEE FLOORING, LLC, a Nevada limited
18 liability company; KEVIN MCKEE, individually,
19 et al,

20 Defendants.

CASE NO.: 2:11-cv-01030-KJD-PAL

FIRST AMENDED JUDGMENT
BY CONFESSION

DATE: N/A


TIME: N/A

21 Pursuant to the express First Amended Stipulation and Consent for Entry of First
22 Amended Judgment by Confession ("First Amended Stipulation"), it is hereby ORDERED,
23 ADJUDGED AND DECREED that:

24 1. The Plaintiffs, Trustees the Employee Painters' Trust Health & Welfare Fund,
25 International Union of Painters and Allied Trades Industry Pension Fund, Floorcoverers Joint
26 Committee, Southern Nevada Floorcoverers Training Trust, Painters Organizing Fund, Finishing
27 Trades Institute and the Painters and Allied Trades Labor-Management Cooperation Initiative
28 (collectively "Plaintiffs" or "Funds"), acting by and through their attorneys, Christensen James &
Martin, shall take First Amended Judgment by Confession ("First Amended Judgment") against
Defendants KDK McKee Flooring, LLC ("KDK") and Kevin McKee ("McKee"), individually
(collectively "Defendants"), in the total amount of Sixty Five Thousand Seventy-Three and
69/100 Dollars (\$65,073.69) ("First Amended Judgment Amount"), which sum includes all pre-
judgment damages owed to the Funds, less monthly payments received from KDK for April 15,

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1 2012 through August 15, 2013 pursuant to the Confession of Judgment entered on April 16, 2012
2 (“Original Confession of Judgment”), interest accrued on the delinquent payments under the
3 Original Confession of Judgment, attorney’s fees and costs of suit for collecting the delinquency,
4 audit costs and current undisputed contribution amounts reported and owed by KDK. Interest
5 shall accrue on the First Amended Judgment Amount at the rate of three percent (3%) per
6 annum.

7 2. The First Amended Judgment Amount shall be paid to Plaintiffs as third party
8 beneficiaries under the terms of collectively bargained labor agreements (“Labor Agreements”) 
9 between KDK and the International Union of Painters and Allied Trades, District Council 15,
10 Local 159 (“Union”) and KDK and the Union. This First Amended Judgment includes
11 settlement of the following: 1) all pre-judgment damages owed to the Funds, including all
12 delinquent contributions, less monthly payments received from KDK for April 15, 2012 through
13 August 15, 2013 pursuant to the Original Confession of Judgment in a total amount of Forty
14 Seven Thousand Four Hundred Seventy-One and 31/100 Dollars (\$47,471.30). The remaining
15 balance of unpaid principal under the Original Confession of Judgment is Fifty Two Thousand
16 Six Hundred Forty and 62/100 Dollars (\$52,640.62) (“Delinquent Judgment Amount”); 2)
17 reduced interest and reduced attorney’s fees and costs for the periods January 1, 2008 through
18 September 30, 2011 with regard to Custom Floors, Inc. and June 1, 2010 through September 30,
19 2011 with regard to KDK (collectively “conditional waivers”); 3) Interest on the delinquent
20 judgment payments for the months of September 15, 2013 through December 15, 2013
21 (“Delinquent Judgment Payments”) at the default rate of seven percent (7%) per annum for a
22 total amount of One Hundred Five and 01/100 Dollars (\$105.01); 4) a payment of Two Thousand
23 Five Hundred Dollars (\$2,500.00) to cover the cost of a payroll audit requested by KDK for the
24 period May 1, 2012 through October 31, 2013 (“Second Audit”). Should the cost of the Second
25 Audit not exceed \$2,500.00, a credit will be given to the Defendants toward the First Amended
26 Judgment Amount by way of applying the credit toward the backend of the First Amended
27 Judgment payout detailed in Exhibit 1 attached hereto; 5) attorney’s fees and costs accrued from
28 the date of execution of the Original Confession of Judgment through October 31, 2013 in the

1 total amount of Six Thousand Six Hundred Sixty and 48/100 Dollars (\$6,660.48); and 6) current
 2 undisputed contribution amounts owed as reported and unpaid by KDK for the months of June
 3 2013 and September 2013 in the total amount of Three Thousand One Hundred Sixty-Seven and
 4 58/100 Dollars (\$3,167.58).

5 3. This First Amended Judgment is not intended to, and it does not, resolve, address
 6 or secure claims that are as yet unknown to the Funds, including any claims that may later be
 7 revealed by Audit, including the Second Audit. The Funds specifically reserve all Audit rights.

8 4. The First Amended Judgment Amount, including interest on the declining First
 9 Amended Judgment balance and any after-accruing amounts, shall be paid by Defendants
 10 through Eighteen (18) monthly installments to the Funds commencing on or before January 15,
 11 2014 and on the fifteenth (15th) day of each month thereafter. The payments shall be made as
 12 follows:

- 13 a. Payments One (1) through Twelve (12) shall be made in the amount of
 14 Three Thousand Dollars (\$3,000.00) each, commencing on January 15,
 15 2014 and continuing on the fifteenth (15th) day of each month thereafter,
 16 through December 15, 2014;
- 17 b. Payments Thirteen (13) through Seventeen (17) shall be made in the
 18 amount of Five Thousand One Hundred Thirty-Six and 95/100 Dollars
 19 (\$5,136.95) each, commencing on January 15, 2015 and continuing on the
 20 fifteenth (15th) day of each month thereafter, through May 15, 2015; and
- 21 c. Payment Eighteen (18), the final payment, shall be made in the amount of
 22 Five Thousand One Hundred Thirty-Six and 97/100 Dollars (\$5,136.97)
 23 on June 15, 2015.

24 A table showing each payment number, due dates and payment amounts (including
 25 principal and interest) is attached hereto as **Exhibit 1**.

26 Subject only to the Defendants' right to cure under Paragraph 11, the final payment of all
 27 unpaid portions of the First Amended Judgment Amount shall be increased to include any after-
 28 accruing attorney's fees incurred by Plaintiffs relating to this First Amended Judgment for

1 collection of the amounts referenced herein, and shall be paid by the Defendants to Plaintiffs on
2 or before June 15, 2015.

3 5. Upon Plaintiffs' timely receipt and negotiation of payment of all amounts set forth
4 in Paragraph 4 above, this obligation will have been satisfied and the total amount of Twenty
5 Thousand One Hundred Sixty Eight and 23/100 Dollars (\$20,168.23) incurred for attorney's fees
6 and costs shall be waived ("Conditional Attorney's Fees Waiver"). However, upon Defendants'
7 failure to perform any obligation under this First Amended Judgment, including, but not limited
8 to, timely payment of the amounts set forth in Paragraph 4 and payment of recurring monthly
9 fringe benefit contributions as described in Paragraph 8, the Conditional Attorney's Fees Waiver
10 shall be deemed revoked and the Defendants shall be obligated to pay such amount to the Funds,
11 plus interest accrued thereon, at the rate of three percent (3%) per annum, through six (6)
12 monthly installments, due on the fifteenth (15th) day of each month, the first of which would be
13 due on July 15, 2015, and the last of which would be due on or before December 15, 2015, as
14 follows:

- 15 a. Payments Nineteen (19) through Twenty-Three (23) shall be remitted to
16 the Funds in the amount of Three Thousand Five Hundred Forty-Six and
17 72/100 Dollars (\$3,546.72) each, commencing on or before July 15, 2015
18 and on the fifteenth (15th) day of each month thereafter, through
19 November 15, 2015;
- 20 b. Payment Twenty-Four (24) shall be remitted to the Funds in the amount of
21 Three Thousand Five Hundred Forty-Six and 71/100 Dollars on December
22 15, 2015.

23 A table showing each payment number, due dates and payment amounts (including
24 principal and interest) is attached hereto as **Exhibit 2**.

25 6. Upon Plaintiffs' timely receipt and negotiation of payment of all amounts set forth
26 in Paragraphs 4 and 5 above, this obligation will have been satisfied and the total amount of
27 Seventeen Thousand Eighty Three and 51/100 Dollars (\$17,083.51), comprised of liquidated
28 damages and interest ("Conditional Damages Waiver") shall be waived. However, upon

1 Defendants' default and failure to cure any obligation for performance due under this First
2 Amended Judgment, the Conditional Damages Waiver shall be deemed revoked, and the First
3 Amended Judgment Amount shall be increased by such amount, plus interest accrued thereon, at
4 the rate of three percent (3%) per annum, and Plaintiffs shall have the unconditional and
5 immediate right to file and execute upon the First Amended Judgment for whatever amount then
6 remains due and owing, as more fully described in Paragraph 11.

7 7. The payments toward the First Amended Judgment Amount required herein shall
8 be made payable to "Painters' Joint Trust Funds" and shall be remitted to Plaintiffs' attorneys,
9 Christensen James & Martin, at 7440 W. Sahara Ave., Las Vegas, NV 89117, or at such other
10 location as the Defendants are notified in writing. Should any of Defendants' payments be
11 returned for insufficient funds, all subsequent payments shall be made using cashier's checks or
12 money orders.

13 8. In addition to paying the First Amended Judgment Amount as required by the
14 foregoing terms, the Defendants shall timely pay all contributions that fall due while any portion
15 of the First Amended Judgment Amount remains unpaid (i.e., for hours worked by Defendants'
16 covered employees while the First Amended Judgment Amount is being paid). The Defendants
17 shall remit monthly reports to the Funds listing hours worked by its covered employees, and shall
18 submit a check to the Funds to pay contributions owed for such hours. The reports and payments
19 shall be delivered to the Plaintiffs or their designee(s) on or before the fifteenth (15th) day of the
20 month following the calendar month in which the covered hours of work listed on the reports are
21 performed.

22 9. The following potential claims are reserved by the Funds: (i) any claims unrelated
23 to the First Amended Judgment Amount, accruing before or after the effective date of this First
24 Amended Judgment, including, without limitation, claims by the Funds for additional
25 contributions and related damages that may be due and owing to the Funds pursuant to the
26 provisions of any collective bargaining agreement to which Defendants may be bound that
27 requires the payment of contributions to the Funds; (ii) the obligation of the Defendants or any
28 trade or business under common control of Defendants (to the extent Defendants or any trade or

1 business under common control with Defendants has any obligation) to pay, and the rights of the
2 Funds to assess and collect, withdrawal liability pursuant to 29 USC § 1381 et. seq. (including
3 the use of Defendants' contribution history for purposes of calculating any withdrawal liability);
4 and (iii) any additional claims discovered by audit for any period.

5 10. The Defendants shall have the right at any time to prepay the entire balance owed,
6 or any portion thereof, without incurring a prepayment penalty. However, interest will continue
7 to accrue on any amount that remains unpaid.

8 11. Should the Defendants fail to satisfy any of the conditions in this First Amended
9 Judgment: (i) the Conditional Attorney's Fees Waiver will be revoked, the First Amended
10 Judgment Amount shall be increased in an amount equal thereto and the Defendants shall be
11 obligated to pay such amount to the Funds, plus interest accrued thereon as more fully described
12 in Paragraph 4 above; (ii) Defendants shall be obligated to pay a One Hundred Fifty Dollar
13 (\$150.00) default fee payable immediately to the Funds; and (iii) a written Notice of Default
14 shall immediately be delivered to KDK McKee Flooring, LLC, c/o Kevin McKee, at 9101 W.
15 Sahara Avenue, #105-H25, Las Vegas, NV 89117. If the Defendants thereafter fail to make the
16 required payment(s) or otherwise fail to comply with the conditions of such paragraphs within
17 ten (10) days of the date of such Notice, the Conditional Damages Waiver will be revoked, the
18 First Amended Judgment Amount shall be increased in an amount equal thereto and Plaintiffs
19 shall have the unconditional and immediate right to file and execute upon the First Amended
20 Judgment for whatever amount then remains due and owing, including after-accruing interest,
21 attorney's fees and costs and audit costs, without further notice to the Defendants or Order from
22 the Court, and Plaintiffs shall also be entitled to pursue any licensing and/or surety bond issued
23 to the Defendants for whatever amount then remains due and owing. In the event of Defendants'
24 default and failure to cure, interest on any unpaid First Amended Judgment balance shall accrue
25 at the rate of seven percent (7%) from the default date until paid in full.

26 12. Defendants shall forthwith execute and submit the following documents, as
27 indicated, to Plaintiffs' attorney on or before December 15, 2013:

28 a. the First Amended Stipulation for Entry of First Amended Judgment by

1 Confession;

2 b. this First Amended Judgment; and

3 c. an Assignment to the Funds on Receivables owed by Crane Construction
4 to KDK in the amount of Fifteen Thousand Dollars (\$15,000.00)
5 (“Assignment”). Upon the Funds’ successful collection of any proceeds
6 under the Assignment, the amount collected will be credited toward the
7 First Amended Judgment Amount by way of applying the credit toward
8 the backend of the First Amended Judgment payout detailed in Exhibit 1.

9 13. Payment by the Defendants under the terms of this First Amended Judgment is
10 secured by the execution of this First Amended Judgment by Kevin McKee, Individually. In the
11 event of default and failure to cure, Plaintiffs shall then be entitled to payment according to the
12 terms of said documents of any unpaid First Amended Judgment balance, plus attorney’s fees
13 and interest accrued from the default date until paid in full.

14 14. Execution on the First Amended Stipulation and this First Amended Judgment
15 shall be stayed through June 15, 2015, provided that payment in full is made by the Defendants
16 in accordance with the terms of this First Amended Judgment.

17 15. Upon Plaintiffs’ receipt and negotiation of the payments described herein, this
18 obligation will have been satisfied and, upon receipt of a request therefor, Plaintiffs shall deliver
19 to the Defendants a written Release and Satisfaction of Claims. Plaintiffs’ Release and
20 Satisfaction of Claims in favor of the Defendants shall not be executed nor delivered until all of
21 Defendants’ obligations under this First Amended Judgment have been fully performed.

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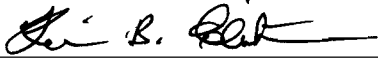
1 16. Defendants have consulted the attorney of its choice and fully understand the
2 obligations and consequences of the First Amended Stipulation and this First Amended
3 Judgment.

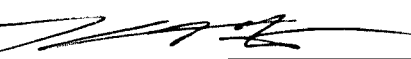
4 DATED and done this 1st day of April, 2014.

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6 
7 UNITED STATES DISTRICT COURT JUDGE

8 CHRISTENSEN JAMES & MARTIN

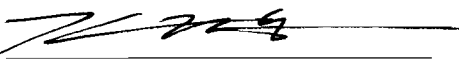
KDK McKEE FLOORING, LLC

9 By: 
10 Kevin B. Christensen, Esq.
11 *Attorneys for Plaintiffs*

By: 
Kevin McKee,
Its Authorized Representative

12 Date: December 4th, 2013.

Date: December 6, 2013.

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14 By: 
Kevin McKee, Individually

15 Date: December 11, 2013.
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OATH AND VERIFICATION

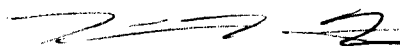
STATE OF NEVADA)
 : ss.
COUNTY OF CLARK)

Kevin McKee, Individually and as the Authorized Representative of KDK McKee Flooring, LLC, being first duly sworn upon oath, now verifies and declares that:

1. Entry of this First Amended Judgment by Confession, according to its provisions, is duly authorized; and

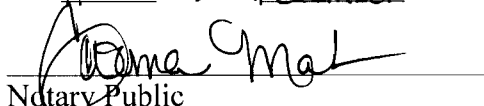
2. The monies due and owing and the basis for said First Amended Judgment are accurately set forth in the First Amended Stipulation and this First Amended Judgment.

Further you affiant sayeth naught.



Kevin McKee, Individually and as the Authorized Representative of KDK McKee Flooring, LLC

Subscribed and Sworn before me
this 11th day of December, 2013.


Notary Public



EXHIBIT

1

ksa

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65,073.69**1 year and 6 months****Monthly****Simple interest**

	Month	Rate	Payment	Interest	Balance	Balance
0						65,073.69
1	01/15/2014	3.00%	3,000.00	162.68	2,837.32	62,236.37
2	02/15/2014		3,000.00	155.59	2,844.41	59,391.96
3	03/15/2014		3,000.00	148.48	2,851.52	56,540.44
4	04/15/2014		3,000.00	141.35	2,858.65	53,681.79
5	05/15/2014		3,000.00	134.20	2,865.80	50,815.99
6	06/15/2014		3,000.00	127.04	2,872.96	47,943.03
7	07/15/2014		3,000.00	119.86	2,880.14	45,062.89
8	08/15/2014		3,000.00	112.66	2,887.34	42,175.55
9	09/15/2014		3,000.00	105.44	2,894.56	39,280.99
10	10/15/2014		3,000.00	98.20	2,901.80	36,379.19
11	11/15/2014		3,000.00	90.95	2,909.05	33,470.14
12	12/15/2014		3,000.00	83.68	2,916.32	30,553.82
13	01/15/2015		5,136.95	76.38	5,060.57	25,493.25
14	02/15/2015		5,136.95	63.73	5,073.22	20,420.03
15	03/15/2015		5,136.95	51.05	5,085.90	15,334.13
16	04/15/2015		5,136.95	38.34	5,098.61	10,235.52
17	05/15/2015		5,136.95	25.59	5,111.36	5,124.16
18	06/15/2015		5,136.97	12.81	5,124.16	0.00
			66,821.72	1,748.03	65,073.69	

EXHIBIT

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KJC

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		20,168.23				Monthly
		2 years			type of interest	Simple interest
0						20,168.23
1	01/15/2014	3.00%	0.00	50.42	-50.42	20,218.65
2	02/15/2014		0.00	50.55	-50.55	20,269.20
3	03/15/2014		0.00	50.67	-50.67	20,319.87
4	04/15/2014		0.00	50.80	-50.80	20,370.67
5	05/15/2014		0.00	50.93	-50.93	20,421.60
6	06/15/2014		0.00	51.05	-51.05	20,472.65
7	07/15/2014		0.00	51.18	-51.18	20,523.83
8	08/15/2014		0.00	51.31	-51.31	20,575.14
9	09/15/2014		0.00	51.44	-51.44	20,626.58
10	10/15/2014		0.00	51.57	-51.57	20,678.15
11	11/15/2014		0.00	51.70	-51.70	20,729.85
12	12/15/2014		0.00	51.82	-51.82	20,781.67
13	01/15/2015		0.00	51.95	-51.95	20,833.62
14	02/15/2015		0.00	52.08	-52.08	20,885.70
15	03/15/2015		0.00	52.21	-52.21	20,937.91
16	04/15/2015		0.00	52.34	-52.34	20,990.25
17	05/15/2015		0.00	52.48	-52.48	21,042.73
18	06/15/2015		0.00	52.61	-52.61	21,095.34
19	07/15/2015		3,546.72	52.74	3,493.98	17,601.36
20	08/15/2015		3,546.72	44.00	3,502.72	14,098.64
21	09/15/2015		3,546.72	35.25	3,511.47	10,587.17
22	10/15/2015		3,546.72	26.47	3,520.25	7,066.92
23	11/15/2015		3,546.72	17.67	3,529.05	3,537.87
24	12/15/2015		3,546.71	8.84	3,537.87	0.00
			21,280.31	1,112.08	20,168.23	